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William W. Schaal,
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN, LLP
7th Floor
1200 Wilshire Boulevard
Los Angeles, CA 90025

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| EXAMINER |
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EDELMAN, BRADLEY E

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| ART UNIT | PAPER NUMBER |
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2153

DATE MAILED: 01/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/675,756

Applicant(s)

KUZMA, ANDREW J.

Examiner

Bradley Edelman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-6,8,10-16,18-21,23-36,38-41,43-46,49,50 and 52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6,8,10-16,18-21,23-36,38-41,43-46,49,50 and 52 is/are rejected.
- 7) ☒ Claim(s) 4 and 24 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office action is in response to Applicant's amendment and request for continued examination filed on September 21, 2004. Claims 1, 2, 4-6, 8, 10-16, 18-21, 23-36, 38-41, 43-46, 49, 50, and 52 are presented for further examination.

Claim Objections

1. Claims 4 and 24 are objected to because of the following informalities: The word "comprising" in these claims should read "comprises." Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. **Claims 8, and 14-16, and 34-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

In considering claim 8, the term "the source" lacks sufficient antecedent basis, and is therefore unclear.

In considering claims 14 and 34, the phrase "the server" is not clear. Claims 1 and 21 from which claims 14 and 34 respectively depend discuss a group of servers ("the servers") and a particular "selected server." Thus, the recitation of "the server" in

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claims 14 and 34 is ambiguous because it is unclear whether it refers to one of "the servers" or to the "selected server" mentioned in claims 1 and 21.

Claims 15 and 35 depend from claims 14 and 34 respectively, and also ambiguously mention "the server." Claims 16 and 36 also depend from claims 14 and 34 respectively. Therefore, claims 15 and 16, and 35 and 36 are rejected for the same reasons as claims 14 and 34.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 2, 4, 5, 8, 10, 11, 13, 18, and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Kenner et al. (U.S. Patent No. 6,003,030, hereinafter "Kenner").

In considering claim 1, Kenner discloses a method comprising:

Registering information with a service provider ("mirror service provider"), the information including a preferred order of servers for routing content to a viewer (col. 7, lines 56-62; col. 13, lines 15-20, "prioritized ranking of delivery sites");

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Receiving a request by the viewer for the content, and in response to the viewer requesting the content, selecting one of the servers to be a selected server to receive and to transmit the content to the viewer via a network (col. 13, lines 15-36, wherein the prioritized ranking of content servers – i.e. “delivery sites” is stored and is used to select one of the servers when a client requests the content).

In considering claim 2, Kenner further discloses that registering of the information comprises registering addresses of each of the servers with the service provider (col. 8, lines 32-33, 66-67, wherein the service provider stores the delivery site file, which includes the IP addresses of content servers).

In considering claim 4, Kenner further discloses that the information further comprises a unique identifier (col. 9, line 7, “Test ID”).

In considering claim 5, Kenner further discloses that the unique ID is a number provided by the service (i.e. “Test ID”).

In considering claim 8, Examiner has interpreted the phrase “source” as meaning “content server.” As so understood, Kenner further discloses that the content servers are regional data centers (col. 6, lines 53-54, wherein content servers are in a particular geographical region).

In considering claim 10, Kenner further discloses that the information comprises a plurality of addresses corresponding to each of the servers (i.e. IP addresses of the servers).

In considering claim 11, Kenner further discloses updating the information (col. 13, lines 37-40, "MSP 32 maintains the delivery site list, adding and deleting sites as necessary").

In considering claim 13, Kenner further discloses storing a server location at a viewer location (the configuration utility 34 at the client stores the addresses of the servers).

In considering claim 18, Kenner further discloses that the network is a WAN ("Internet").

In considering claim 19, Kenner further discloses that the network is a network indicating a type of connection (all Internet communications inherently indicate a type of connection).

4. Claims 21, 23, 24, 29-31, 33, 38, 39, 41, 43, 44, 49, and 50 are rejected under 35 U.S.C. 102(e) as being anticipated by Emens et al. (U.S. Patent No. 6,606,643, her inafter "Emens").

In considering claim 21, Emens discloses a computer program product comprising a machine usable medium having a computer program code embedded therein, the computer program product having:

Computer readable program code for registering a plurality of servers with a service provider (col. 4, lines 35, "creating a list of mirror servers at the host server") and for receiving information, from a viewer requesting multimedia information, identifying the plurality of servers to route the multimedia file to the viewer (col. 4, lines 33-40, wherein the information request sent from the client computer identifies the group of mirror servers);

Computer readable program code for selecting a server of the plurality of servers based on the received information (col. 4, lines 58-60, "selecting a particular mirror server"); and

Computer readable program code for transmitting the multimedia information from the selected server to a viewer via a network (col. 9, lines 59-67; col. 1, lines 27-35, wherein the client will connect to the selected server to receive multimedia web forms and other information).

In considering claim 23, Emens further discloses that the information comprises an address (i.e. "mirror server address," col. 8, lines 18-23).

In considering claim 24, Emens further discloses that the information further comprises a unique identifier (i.e. the mirror server addresses are each unique).

In considering claim 29, Emens further discloses that the information comprises a plurality of addresses (i.e. the list of mirror server addresses).

In considering claim 30, Emens further discloses that the addresses correspond to a plurality of servers (mirror servers).

In considering claim 31, Emens further discloses computer readable program code for updating the information (col. 10, lines 13-24).

In considering claim 33, Emens further discloses computer program code for storing a server location at a viewer location (col. 8, lines 25-40, wherein the client stores the location of mirror servers based on round trip time, such that the mirror server with the shortest time is the closest server).

In considering claim 38, Emens further discloses that the network is a LAN or WAN (i.e. Internet).

In considering claim 39, Emens further discloses that the network indicates a type of connection (i.e. HTTP connections).

Claim 41 presents an apparatus for performing the same steps as claim 21, and is thus rejected for the same reasons.

Claim 43 and 44 contain the same limitations as claims 23 and 24 and are thus rejected for the same reasons.

Claim 49 and 50 contain the same limitations as claims 29 and 30 and are thus rejected for the same reasons.

5. Claims 21, 23-25, 27-30, 32, 33, 38, 39, 41, 43-45, 49, 50, and 52 are rejected under 35 U.S.C. 102(e) as being anticipated by Logan et al. (U.S. Patent No. 6,578,066, hereinafter "Logan").

In considering claim 21, Logan discloses a computer program product comprising a machine usable medium having a computer program code embedded therein, the computer program product having:

Computer readable program code for registering a plurality of servers with a service provider (col. 10, lines 57-58, "ordered hand-off table" in the server switch) and for receiving information, from a viewer requesting multimedia information, identifying the plurality of servers to route the multimedia file to the viewer (col. 10, lines 52-57, "source IP address," "user's IP address," and server site addresses);

Computer readable program code for selecting a server of the plurality of servers based on the received information (col. 10, lines 57-65, "chooses a next remote server" based on the IP address); and

Computer readable program code for transmitting the multimedia information from the selected server to a viewer via a network (the client will use the selected address to obtain the multimedia Web information).

In considering claim 23, Logan further discloses that the information comprises an address (col. 10, lines 52-65).

In considering claim 24, Logan further discloses that the information further comprises a unique identifier (i.e. IP address, source address, and server addresses).

In considering claim 25, Logan further discloses that the unique ID is a global user ID number (i.e. user IP address).

In considering claim 27, Logan further discloses that the receiving information comprises gathering one of a local information and a viewer location (i.e. user's IP address, source address, or server address).

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In considering claim 28, Logan further discloses confirming the viewer location of the viewer (col. 10, lines 52-65, wherein selecting the geographically closest server to the requesting client will confirm a viewer location).

In considering claim 29, Logan further discloses that the information comprises a plurality of addresses (i.e. "ordered hand-off table").

In considering claim 30, Logan further discloses that the addresses correspond to a plurality of servers (remote servers).

In considering claim 32, Logan further discloses that the information is geographic information of the viewer (col. 10, lines 15-35, 53-60, wherein the system finds which remote server is closest to the geographic location of the user).

In considering claim 33, Logan further discloses computer program code for storing a server location at a viewer location (col. 11, lines 5-8, wherein the "HTTP redirect" sent to the client includes the IP address of the remote server).

In considering claim 38, Logan further discloses that the network is a LAN or WAN (i.e. Internet).

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In considering claim 39, Logan further discloses that the network indicates a type of connection (i.e. HTTP connections).

Claim 41 presents an apparatus for performing the same steps as claim 21, and is thus rejected for the same reasons.

Claims 43 and 44 contain the same limitations as claims 23 and 24 and are thus rejected for the same reasons.

Claims 45 and 52 contain the same limitations as claims 25 and 32 and are thus rejected for the same reasons.

Claims 49 and 50 contain the same limitations as claims 29 and 30 and are thus rejected for the same reasons.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kenner.

In considering claim 20, Kenner further discloses that the type of connection can be a modem connection (col. 9, line 39, "modem"). While Kenner does not explicitly say what type of modem is used, and thus does not explicitly disclose a dial-up modem, Examiner takes official notice that dial-up modems were well known at the time the invention was made. It would have been obvious to allow dial-up modem connections in the system taught by Kenner, so that users can communicate over the Internet via their phone lines, thus avoiding the need for a direct Internet connection.

7. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Emens.

In considering claim 20, Emens remains silent regarding the type of hardware connections that servers and clients can have to the network. Nonetheless, Examiner takes official notice that Ethernet, WDM, ATM, and dial-up modems were well known at the time the invention was made. It would have been obvious to allow these types of connections to the network taught by Emens because they are standard, widely available connection means.

8. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Logan.

In considering claim 20, Logan remains silent regarding the type of hardware connections that servers and clients can have to the network. Nonetheless, Examiner takes official notice that Ethernet, WDM, ATM, and dial-up modems were well known at

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the time the invention was made. It would have been obvious to allow these types of connections to the network taught by Logan because they are standard, widely available connection means.

9. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kenner, in view of Logan.

In considering claim 12, although Kenner discloses substantial features of the claimed invention, it fails to disclose storing information regarding the geographic information of the user. Nonetheless, as discussed above, Logan discloses such a feature in a server selection system. Thus, as suggested by Logan, it would have been obvious to include a geographical indicator in the system taught by Kenner to better select a server closest to the requesting client.

10. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kenner, in view of Kenner et al. (U.S. Patent No. 5,956,716, hereinafter "Kenner2").

In considering claim 6, although Kenner describes substantial features of the claimed invention, it does not disclose receiving a registration number along with the request, the registration number being assigned by the service provider and used to select the selected server. Nonetheless, using registration numbers, rather than simply a client identifier such as an IP address, to select a server from a group of available servers on a network is well known, as evidenced by Kenner2. In a similar art, Kenner2 discloses a system for a service provider ("PIM 64") to select appropriate servers

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("SRUs 66") to respond to client requests, wherein a client request for information includes a registration ID ("subscriber ID number") that is used to select the appropriate server to respond to the request (col. 24, lines 1-3, 10-13, 17-25, 35-40). Thus, given the teaching of Kenner2, a person having ordinary skill in the art would have readily recognized the desirability and advantages of including a registration ID in the requests taught by Kenner instead of just an IP address, because IP addresses for a device using a modem will dynamically change, and so identifying users by a registration ID will be easier to maintain than dynamic IP addresses. Therefore, it would have been obvious to use registration IDs to identify the user and select the server in the system taught by Kenner.

11. Claims 26 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Emens, in view of Kenner2.

In considering claims 26 and 46, although Emens describes substantial features of the claimed invention, it does not disclose receiving a registration number along with the request, the registration number being assigned by the service provider and used to select the selected server. Nonetheless, using registration numbers, rather than simply a client identifier such as an IP address, to select a server from a group of available servers on a network is well known, as evidenced by Kenner2. In a similar art, Kenner2 discloses a system for a service provider ("PIM 64") to select appropriate servers ("SRUs 66") to respond to client requests, wherein a client request for information includes a registration ID ("subscriber ID number") that is used to select the appropriate

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server to respond to the request (col. 24, lines 1-3, 10-13, 17-25, 35-40). Thus, given the teaching of Kenner2, a person having ordinary skill in the art would have readily recognized the desirability and advantages of including a registration ID in the requests taught by Kenner instead of just an IP address, because IP addresses for a device using a modem will dynamically change, and so identifying users by a registration ID will be easier to maintain than dynamic IP addresses. Therefore, it would have been obvious to use registration IDs to identify the user and select the server in the system taught by Emens.

12. Claims 26 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Logan, in view of Kenner2.

In considering claims 26 and 46, although Logan describes substantial features of the claimed invention, it does not disclose receiving a registration number along with the request, the registration number being assigned by the service provider and used to select the selected server. Nonetheless, using registration numbers, rather than simply a client identifier such as an IP address, to select a server from a group of available servers on a network is well known, as evidenced by Kenner2. In a similar art, Kenner2 discloses a system for a service provider ("PIM 64") to select appropriate servers ("SRUs 66") to respond to client requests, wherein a client request for information includes a registration ID ("subscriber ID number") that is used to select the appropriate server to respond to the request (col. 24, lines 1-3, 10-13, 17-25, 35-40). Thus, given the teaching of Kenner2, a person having ordinary skill in the art would have readily

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recognized the desirability and advantages of including a registration ID in the requests taught by Kenner instead of just an IP address, because IP addresses for a device using a modem will dynamically change, and so identifying users by a registration ID will be easier to maintain than dynamic IP addresses. Therefore, it would have been obvious to use registration IDs to identify the user and select the server in the system taught by Logan.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradley Edelman whose telephone number is 571-272-3953. The examiner can normally be reached from 9 a.m. to 5 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached at 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink that reads "Bradley Edelman". The signature is written in a cursive, flowing style.

BE

January 3, 2005